

AMENDED IN ASSEMBLY MAY 9, 2016

CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

ASSEMBLY BILL

No. 2230

Introduced by Assembly Member Chu

February 18, 2016

An act to amend ~~Sections 4600, 5502, and 5710~~ *Section 5811* of the Labor Code, relating to workers' compensation.

LEGISLATIVE COUNSEL'S DIGEST

AB 2230, as amended, Chu. Workers' compensation: language interpreters.

~~(1) Existing~~

Existing law establishes a workers' compensation system, administered by the Administrative Director of the Division of Workers' Compensation, that generally requires employers to secure the payment of workers' compensation for injuries incurred by their employees that arise out of, or in the course of, employment. Existing law requires an employer to provide all medical, surgical, chiropractic, acupuncture, and hospital treatment that is reasonably required to cure or relieve the injured worker from the effects of his or her injury, and makes the employer liable for the reasonable expense incurred by or on behalf of the employee in providing treatment, as specified. *Existing law authorizes a qualified interpreter to render services in various settings for purposes of workers compensation claims. Existing law prohibits an interpreter from disclosing to any person who is not an immediate participant in the communications the content of the conversations or documents that the interpreter has interpreted or transliterated unless the disclosure is compelled by court order.*

This bill would expressly include within this prohibition the disclosure of any communication or transliteration involving attorney-client privileged communications, and would make additional nonsubstantive conforming changes.

~~Existing law requires, in a workers' compensation proceeding, an employer to provide the services of a qualified interpreter, as defined, when, at the request of the employer, the employer's insurer, the administrative director, the appeals board, or a workers' compensation administrative law judge, an employee submits to examination by a physician and the employee does not proficiently speak or understand the English language. In addition, existing law requires, upon request of the injured employee, the employer or insurance carrier to pay for interpretation services if the injured employee cannot effectively communicate with his or her treating physician because he or she cannot proficiently speak or understand the English language.~~

~~This bill would require the interpreter to be an interpreter of the employee's choice under both circumstances. The bill would also authorize the employer to select the interpreter if interpretation services are required and the employee has not selected an interpreter.~~

~~(2) Existing law establishes the Workers' Compensation Appeals Board and vests the appeals board with full power, authority, and jurisdiction to try and to determine specified matters in workers' compensation proceedings, including matters relating to the recovery of compensation, and enforcement against the employer or an insurer of liability for compensation imposed upon the employer. Existing law authorizes the appeals board to appoint one or more workers' compensation judges in any proceeding. Existing law governs hearing held before the appeals board or a workers' compensation judge.~~

~~This bill would require, upon request from either the employee or witness, the employer to pay for the services of a language interpreter who is selected by the employee and who meets specified criteria, if interpretation services are required in workers' compensation proceedings because the injured employee or witness does not proficiently speak or understand the English language. The bill would authorize the employer to select the interpreter if interpretation services are required and the employee has not selected an interpreter, as specified.~~

~~(3) Existing law authorizes the appeals board, a workers' compensation judge, or any party to the action or proceeding, in any investigation or hearing before the appeals board, to cause the deposition~~

of witnesses. Existing law requires the employer to pay for the services of a language interpreter, upon request from either a witness or deponent, if interpretation services are required because the injured employee or deponent does not proficiently speak or understand the English language.

~~This bill would require the interpreter to be selected by the employee, but would also authorize the employer to select the interpreter if interpretation services are required and the employee has not selected an interpreter. The bill would also authorize a witness, rather than a deponent, who does not proficiently speak or understand the English language to request the employer to pay for the services of a language interpreter.~~

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 5811 of the Labor Code is amended to
2 read:

3 5811. (a) No fees shall be charged by the clerk of any court
4 for the performance of any official service required by this division,
5 except for the docketing of awards as judgments and for certified
6 copies of transcripts thereof. In all proceedings under this division
7 before the appeals board, costs as between the parties may be
8 allowed by the appeals board.

9 (b) (1) It shall be the responsibility of any party producing a
10 witness requiring an interpreter to arrange for the presence of a
11 qualified interpreter.

12 (2) A qualified interpreter is a language interpreter who is
13 certified, or deemed certified, pursuant to Article 8 (commencing
14 with Section 11435.05) of Chapter 4.5 of Part 1 of Division 3 of
15 Title 2 of, or Section 68566 of, the Government Code. The duty
16 of an interpreter is to accurately and impartially translate oral
17 communications and transliterate written materials, and not to act
18 as an agent or advocate. An interpreter shall not disclose to any
19 person who is not an immediate participant in the communications
20 the content of the conversations or documents that the interpreter
21 has interpreted or ~~transliterated~~ transliterated, including, regardless
22 of the circumstances of where or how the communication occurred,
23 any communication or transliteration involving attorney-client
24 privileged communications, unless the disclosure is compelled by

1 court order. An attempt by any party or attorney to obtain
2 ~~disclosure~~ disclosure, including, regardless of the circumstances
3 of where or how the communication occurred, disclosure of any
4 communication or transliteration involving attorney-client
5 privileged communications, is a bad faith tactic that is subject to
6 Section 5813.

7 **Interpreter**

8 (3) Interpreter fees that are reasonably, actually, and necessarily
9 incurred shall be paid by the employer under this section, provided
10 they are in accordance with the fee schedule adopted by the
11 administrative director.

12 **A**

13 (4) A qualified interpreter may render services during the
14 following:

15 (A) A deposition.

16 (B) An appeals board hearing.

17 (C) A medical treatment appointment or medical-legal
18 examination.

19 (D) During those settings which the administrative director
20 determines are reasonably necessary to ascertain the validity or
21 extent of injury to an employee who does not proficiently speak
22 or understand the English language.

23 ~~SECTION 1. Section 4600 of the Labor Code is amended to~~
24 ~~read:~~

25 ~~4600. (a) Medical, surgical, chiropractic, acupuncture, and~~
26 ~~hospital treatment, including nursing, medicines, medical and~~
27 ~~surgical supplies, crutches, and apparatuses, including orthotic and~~
28 ~~prosthetic devices and services, that is reasonably required to cure~~
29 ~~or relieve the injured worker from the effects of his or her injury~~
30 ~~shall be provided by the employer. In the case of his or her neglect~~
31 ~~or refusal reasonably to do so, the employer is liable for the~~
32 ~~reasonable expense incurred by or on behalf of the employee in~~
33 ~~providing treatment.~~

34 ~~(b) As used in this division and notwithstanding any other law,~~
35 ~~medical treatment that is reasonably required to cure or relieve the~~
36 ~~injured worker from the effects of his or her injury means treatment~~
37 ~~that is based upon the guidelines adopted by the administrative~~
38 ~~director pursuant to Section 5307.27.~~

39 ~~(c) Unless the employer or the employer's insurer has~~
40 ~~established or contracted with a medical provider network as~~

1 provided for in Section 4616, after 30 days from the date the injury
2 is reported, the employee may be treated by a physician of his or
3 her own choice or at a facility of his or her own choice within a
4 reasonable geographic area. A chiropractor shall not be a treating
5 physician after the employee has received the maximum number
6 of chiropractic visits allowed by subdivision (e) of Section 4604.5.

7 ~~(d) (1) If an employee has notified his or her employer in~~
8 ~~writing prior to the date of injury that he or she has a personal~~
9 ~~physician, the employee shall have the right to be treated by that~~
10 ~~physician from the date of injury if the employee has health care~~
11 ~~coverage for nonoccupational injuries or illnesses on the date of~~
12 ~~injury in a plan, policy, or fund as described in subdivisions (b),~~
13 ~~(c), and (d) of Section 4616.7.~~

14 ~~(2) For purposes of paragraph (1), a personal physician shall~~
15 ~~meet all of the following conditions:~~

16 ~~(A) Be the employee's regular physician and surgeon, licensed~~
17 ~~pursuant to Chapter 5 (commencing with Section 2000) of Division~~
18 ~~2 of the Business and Professions Code.~~

19 ~~(B) Be the employee's primary care physician and has~~
20 ~~previously directed the medical treatment of the employee, and~~
21 ~~who retains the employee's medical records, including his or her~~
22 ~~medical history. "Personal physician" includes a medical group,~~
23 ~~if the medical group is a single corporation or partnership~~
24 ~~composed of licensed doctors of medicine or osteopathy, which~~
25 ~~operates an integrated multispecialty medical group providing~~
26 ~~comprehensive medical services predominantly for~~
27 ~~nonoccupational illnesses and injuries.~~

28 ~~(C) The physician agrees to be predesignated.~~

29 ~~(3) If the employee has health care coverage for nonoccupational~~
30 ~~injuries or illnesses on the date of injury in a health care service~~
31 ~~plan licensed pursuant to Chapter 2.2 (commencing with Section~~
32 ~~1340) of Division 2 of the Health and Safety Code, and the~~
33 ~~employer is notified pursuant to paragraph (1), all medical~~
34 ~~treatment, utilization review of medical treatment, access to~~
35 ~~medical treatment, and other medical treatment issues shall be~~
36 ~~governed by Chapter 2.2 (commencing with Section 1340) of~~
37 ~~Division 2 of the Health and Safety Code. Disputes regarding the~~
38 ~~provision of medical treatment shall be resolved pursuant to Article~~
39 ~~5.55 (commencing with Section 1374.30) of Chapter 2.2 of~~
40 ~~Division 2 of the Health and Safety Code.~~

1 ~~(4) If the employee has health care coverage for nonoccupational~~
2 ~~injuries or illnesses on the date of injury in a group health insurance~~
3 ~~policy as described in Section 4616.7, all medical treatment,~~
4 ~~utilization review of medical treatment, access to medical~~
5 ~~treatment, and other medical treatment issues shall be governed~~
6 ~~by the applicable provisions of the Insurance Code.~~

7 ~~(5) The insurer may require prior authorization of any~~
8 ~~nonemergency treatment or diagnostic service and may conduct~~
9 ~~reasonably necessary utilization review pursuant to Section 4610.~~

10 ~~(6) An employee shall be entitled to all medically appropriate~~
11 ~~referrals by the personal physician to other physicians or medical~~
12 ~~providers within the nonoccupational health care plan. An~~
13 ~~employee shall be entitled to treatment by physicians or other~~
14 ~~medical providers outside of the nonoccupational health care plan~~
15 ~~pursuant to standards established in Article 5 (commencing with~~
16 ~~Section 1367) of Chapter 2.2 of Division 2 of the Health and Safety~~
17 ~~Code.~~

18 ~~(e) (1) When at the request of the employer, the employer's~~
19 ~~insurer, the administrative director, the appeals board, or a workers'~~
20 ~~compensation administrative law judge, the employee submits to~~
21 ~~examination by a physician, he or she shall be entitled to receive,~~
22 ~~in addition to all other benefits herein provided, all reasonable~~
23 ~~expenses of transportation, meals, and lodging incident to reporting~~
24 ~~for the examination, together with one day of temporary disability~~
25 ~~indemnity for each day of wages lost in submitting to the~~
26 ~~examination.~~

27 ~~(2) Regardless of the date of injury, "reasonable expenses of~~
28 ~~transportation" includes mileage fees from the employee's home~~
29 ~~to the place of the examination and back at the rate of twenty-one~~
30 ~~cents (\$0.21) a mile or the mileage rate adopted by the Director~~
31 ~~of the Department of Human Resources pursuant to Section 19820~~
32 ~~of the Government Code, whichever is higher, plus any bridge~~
33 ~~tolls. The mileage and tolls shall be paid to the employee at the~~
34 ~~time he or she is given notification of the time and place of the~~
35 ~~examination.~~

36 ~~(f) When at the request of the employer, the employer's insurer,~~
37 ~~the administrative director, the appeals board, or a workers'~~
38 ~~compensation administrative law judge, an employee submits to~~
39 ~~examination by a physician and the employee does not proficiently~~
40 ~~speak or understand the English language, he or she shall be~~

1 entitled to the services of a qualified interpreter of his or her choice
2 in accordance with conditions and a fee schedule prescribed by
3 the administrative director. These services shall be provided by
4 the employer. For purposes of this section, "qualified interpreter"
5 means a language interpreter certified, or deemed certified,
6 pursuant to Article 8 (commencing with Section 11435.05) of
7 Chapter 4.5 of Part 1 of Division 3 of Title 2 of, or Section 68566
8 of, the Government Code. The employer may select the interpreter
9 if interpretation services are required and the employee has not
10 selected an interpreter.

11 (g) If the injured employee cannot effectively communicate
12 with his or her treating physician because he or she cannot
13 proficiently speak or understand the English language, the injured
14 employee is entitled to the services of a qualified interpreter of his
15 or her choice during medical treatment appointments. To be a
16 qualified interpreter for purposes of medical treatment
17 appointments, an interpreter is not required to meet the
18 requirements of subdivision (f), but shall meet any requirements
19 established by rule by the administrative director that are
20 substantially similar to the requirements set forth in Section
21 1367.04 of the Health and Safety Code. The administrative director
22 shall adopt a fee schedule for qualified interpreter fees in
23 accordance with this section. Upon request of the injured employee,
24 the employer or insurance carrier shall pay for interpretation
25 services. An employer shall not be required to pay for the services
26 of an interpreter who is not certified or is provisionally certified
27 by the person conducting the medical treatment or examination
28 unless either the employer consents in advance to the selection of
29 the individual who provides the interpreting service or the injured
30 worker requires interpreting service in a language other than the
31 languages designated pursuant to Section 11435.40 of the
32 Government Code. The employer may select the interpreter if
33 interpretation services are required and the employee has not
34 selected an interpreter.

35 (h) Home health care services shall be provided as medical
36 treatment only if reasonably required to cure or relieve the injured
37 employee from the effects of his or her injury and prescribed by
38 a physician and surgeon licensed pursuant to Chapter 5
39 (commencing with Section 2000) of Division 2 of the Business
40 and Professions Code, and subject to Section 5307.1 or 5307.8.

1 The employer shall not be liable for home health care services that
2 are provided more than 14 days prior to the date of the employer's
3 receipt of the physician's prescription.

4 SEC. 2. Section 5502 of the Labor Code is amended to read:

5 5502. (a) Except as provided in subdivisions (b) and (d), the
6 hearing shall be held not less than 10 days, and not more than 60
7 days, after the date a declaration of readiness to proceed, on a form
8 prescribed by the appeals board, is filed. If a claim form has been
9 filed for an injury occurring on or after January 1, 1990, and before
10 January 1, 1994, an application for adjudication shall accompany
11 the declaration of readiness to proceed.

12 (b) The administrative director shall establish a priority calendar
13 for issues requiring an expedited hearing and decision. A hearing
14 shall be held and a determination as to the rights of the parties
15 shall be made and filed within 30 days after the declaration of
16 readiness to proceed is filed if the issues in dispute are any of the
17 following, provided that if an expedited hearing is requested, no
18 other issue may be heard until the medical provider network dispute
19 is resolved:

20 (1) The employee's entitlement to medical treatment pursuant
21 to Section 4600, except for treatment issues determined pursuant
22 to Sections 4610 and 4610.5.

23 (2) Whether the injured employee is required to obtain treatment
24 within a medical provider network.

25 (3) A medical treatment appointment or medical-legal
26 examination.

27 (4) The employee's entitlement to, or the amount of, temporary
28 disability indemnity payments.

29 (5) The employee's entitlement to compensation from one or
30 more responsible employers when two or more employers dispute
31 liability as among themselves.

32 (6) Any other issues requiring an expedited hearing and
33 determination as prescribed in rules and regulations of the
34 administrative director.

35 (c) The administrative director shall establish a priority
36 conference calendar for cases in which the employee is represented
37 by an attorney or is or was employed by an illegally uninsured
38 employer and the issues in dispute are employment or injury arising
39 out of employment or in the course of employment. The conference
40 shall be conducted by a workers' compensation administrative law

1 judge within 30 days after the declaration of readiness to proceed.
2 If the dispute cannot be resolved at the conference, a trial shall be
3 set as expeditiously as possible, unless good cause is shown why
4 discovery is not complete, in which case status conferences shall
5 be held at regular intervals. The case shall be set for trial when
6 discovery is complete, or when the workers' compensation
7 administrative law judge determines that the parties have had
8 sufficient time in which to complete reasonable discovery. A
9 determination as to the rights of the parties shall be made and filed
10 within 30 days after the trial.

11 (d) (1) In all cases, a mandatory settlement conference, except
12 a lien conference or a mandatory settlement lien conference, shall
13 be conducted not less than 10 days, and not more than 30 days,
14 after the filing of a declaration of readiness to proceed. If the
15 dispute is not resolved, the regular hearing, except a lien trial, shall
16 be held within 75 days after the declaration of readiness to proceed
17 is filed.

18 (2) The settlement conference shall be conducted by a workers'
19 compensation administrative law judge or by a referee who is
20 eligible to be a workers' compensation administrative law judge
21 or eligible to be an arbitrator under Section 5270.5. At the
22 mandatory settlement conference, the referee or workers'
23 compensation administrative law judge shall have the authority to
24 resolve the dispute, including the authority to approve a
25 compromise and release or issue a stipulated finding and award,
26 and if the dispute cannot be resolved, to frame the issues and
27 stipulations for trial. The appeals board shall adopt any regulations
28 needed to implement this subdivision. The presiding workers'
29 compensation administrative law judge shall supervise settlement
30 conference referees in the performance of their judicial functions
31 under this subdivision.

32 (3) If the claim is not resolved at the mandatory settlement
33 conference, the parties shall file a pretrial conference statement
34 noting the specific issues in dispute, each party's proposed
35 permanent disability rating, and listing the exhibits, and disclosing
36 witnesses. Discovery shall close on the date of the mandatory
37 settlement conference. Evidence not disclosed or obtained
38 thereafter shall not be admissible unless the proponent of the
39 evidence can demonstrate that it was not available or could not

1 have been discovered by the exercise of due diligence prior to the
2 settlement conference.

3 ~~(e) In cases involving the Director of Industrial Relations in his~~
4 ~~or her capacity as administrator of the Uninsured Employers Fund,~~
5 ~~this section shall not apply unless proof of service, as specified in~~
6 ~~paragraph (1) of subdivision (d) of Section 3716, has been filed~~
7 ~~with the appeals board and provided to the Director of Industrial~~
8 ~~Relations, valid jurisdiction has been established over the employer,~~
9 ~~and the fund has been joined.~~

10 ~~(f) If interpretation services are required because the injured~~
11 ~~employee or witness does not proficiently speak or understand the~~
12 ~~English language, upon request from either the employee or~~
13 ~~witness, the employer shall pay for the services of a language~~
14 ~~interpreter who is selected by the employee and who is certified~~
15 ~~or deemed certified pursuant to Article 8 (commencing with~~
16 ~~Section 11435.05) of Chapter 4.5 of Part 1 of Division 3 of Title~~
17 ~~2 of, or Section 68566 of, the Government Code. The employer~~
18 ~~may select the interpreter if interpretation services are required~~
19 ~~and the employee has not selected an interpreter. The fee to be~~
20 ~~paid by the employer shall be in accordance with the fee schedule~~
21 ~~adopted by the administrative director and shall include any other~~
22 ~~deposition-related events as permitted by the administrative~~
23 ~~director.~~

24 ~~(g) Except as provided in subdivision (a), this section shall apply~~
25 ~~irrespective of the date of injury.~~

26 ~~SEC. 3. Section 5710 of the Labor Code is amended to read:~~

27 ~~5710. (a) The appeals board, a workers' compensation judge,~~
28 ~~or any party to the action or proceeding, may, in any investigation~~
29 ~~or hearing before the appeals board, cause the deposition of~~
30 ~~witnesses residing within or without the state to be taken in the~~
31 ~~manner prescribed by law for like depositions in civil actions in~~
32 ~~the superior courts of this state under Title 4 (commencing with~~
33 ~~Section 2016.010) of Part 4 of the Code of Civil Procedure. To~~
34 ~~that end the attendance of witnesses and the production of records~~
35 ~~may be required. Depositions may be taken outside the state before~~
36 ~~any officer authorized to administer oaths. The appeals board or~~
37 ~~a workers' compensation judge in any proceeding before the~~
38 ~~appeals board may cause evidence to be taken in other jurisdictions~~
39 ~~before the agency authorized to hear workers' compensation~~
40 ~~matters in those other jurisdictions.~~

1 ~~(b) If the employer or insurance carrier requests a deposition to~~
2 ~~be taken of an injured employee, or any person claiming benefits~~
3 ~~as a dependent of an injured employee, the deponent is entitled to~~
4 ~~receive in addition to all other benefits:~~

5 ~~(1) All reasonable expenses of transportation, meals, and lodging~~
6 ~~incident to the deposition.~~

7 ~~(2) Reimbursement for any loss of wages incurred during~~
8 ~~attendance at the deposition.~~

9 ~~(3) One copy of the transcript of the deposition, without cost.~~

10 ~~(4) A reasonable allowance for attorney's fees for the deponent,~~
11 ~~if represented by an attorney licensed by the State Bar of this state.~~
12 ~~The fee shall be discretionary with, and, if allowed, shall be set~~
13 ~~by, the appeals board, but shall be paid by the employer or his or~~
14 ~~her insurer.~~

15 ~~(5) If interpretation services are required because the injured~~
16 ~~employee or witness does not proficiently speak or understand the~~
17 ~~English language, upon a request from either the employee or~~
18 ~~witness, the employer shall pay for the services of a language~~
19 ~~interpreter who is selected by the employee and who is certified~~
20 ~~or deemed certified pursuant to Article 8 (commencing with~~
21 ~~Section 11435.05) of Chapter 4.5 of Part 1 of Division 3 of Title~~
22 ~~2 of, or Section 68566 of, the Government Code. The employer~~
23 ~~may select the interpreter if interpretation services are required~~
24 ~~and the employee has not selected an interpreter. The fee to be~~
25 ~~paid by the employer shall be in accordance with the fee schedule~~
26 ~~adopted by the administrative director and shall include any other~~
27 ~~deposition-related events as permitted by the administrative~~
28 ~~director.~~